

AGENCY FOR INTERNATIONAL DEVELOPMENT
CONTRACT OPERATIONS

OFFICE OF RESEARCH, EVALUATION AND
PLANNING ASSISTANCE STAFF

(PART 2)

SEPTEMBER 26, 1962

TWENTY-SIXTH REPORT

BY THE

COMMITTEE ON GOVERNMENT
OPERATIONS



SEPTEMBER 26, 1962.—Committed to the Committee of the Whole House
on the State of the Union and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

85006

WASHINGTON : 1962

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LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
Washington, D.C., September 26, 1962.

Hon. JOHN W. McCORMACK,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: By direction of the Committee on Government Operations, I submit herewith the committee's twenty-sixth report to the 87th Congress. The committee's report is based on a study made by its Foreign Operations and Monetary Affairs Subcommittee.

WILLIAM L. DAWSON, *Chairman.*

LETTER OF TRANSMITTAL

House of Representatives
Washington, D.C., November 28, 1952.

Hon. J. W. McClellan,
Speaker of the House of Representatives,
Washington, D.C.

Dear Mr. Speaker: By direction of the Committee on Governmental Operations, I submit herewith the committee's twenty-sixth report to the 81st Congress. The committee's report is based on a study made by its Foreign Operations and Information Affairs Subcommittee.

William L. Dawson, Chairman.

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Union Calendar No. 1037

87TH CONGRESS }
2d Session }

HOUSE OF REPRESENTATIVES }

REPORT
No. 2480

AGENCY FOR INTERNATIONAL DEVELOPMENT CONTRACT OPERATIONS

Office of Research, Evaluation, and Planning Assistance Staff
(Part 2)

SEPTEMBER 26, 1962.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. DAWSON, from the Committee on Government Operations,
submitted the following

TWENTY-SIXTH REPORT

BASED ON A STUDY BY THE FOREIGN OPERATIONS AND
MONETARY AFFAIRS SUBCOMMITTEE

On September 24, 1962, the Committee on Government Operations, had before it for consideration a report entitled "Agency for International Development Contract Operations, Office of Research, Evaluation and Planning Assistance Staff (Part 2)." Upon motion made and seconded, the report was approved and adopted as the report of the full committee. The chairman was directed to transmit a copy to the Speaker of the House.

INTRODUCTION

This report results from a study by the Foreign Operations and Monetary Affairs Subcommittee into the efficiency and economy of the contract operations of the Office of Research, Evaluation, and Planning Assistance Staff (REPAS) of the Agency for International Development (AID). Part 1 was reported on September 19, 1962, as House Report No. 2436.

Part 2 is based on the subcommittee's examination of two contracts let by REPAS relating to land reform activities and land tenure problems, principally in Latin America.

One contract is with the University of Wisconsin, in the estimated amount of \$1,393,275; and the other with the American Bar Foundation, in the estimated amount of \$700,000.

In this report the subcommittee does not question either the capability or the professional responsibility of the University of Wisconsin or the American Bar Foundation; the sole issue is the quality of the performance of REPAS in carrying out its contract functions.

FINDINGS AND CONCLUSIONS ¹

1. Service contracts were disguised as research programs in order to finance them with REPAS funds.

2. The sudden "great urgency" which pervaded the contract negotiations near the close of the fiscal year stemmed primarily from a desire to obligate funds which if unexpended by the end of the fiscal year would revert to the Treasury.

3. The contract negotiators were not furnished with all available pertinent information and background material regarding the proposals which would have enabled them to deal with the contractors to the best advantage of the U.S. Government.

4. The scope of the research to be performed by the University of Wisconsin is so broadly stated in the contract that it is impossible to determine precisely what the university agreed to do.

5. An attorney-adviser in the Office of the General Counsel of AID approved the University of Wisconsin contract as a document sufficiently legal to obligate the Government to make payment thereunder, even though his objections to its failure to properly protect the Government's interests were not overcome.

6. The files of AID dispute AID officials' present contention that the University of Wisconsin and the American Bar Foundation contracts were designed from the beginning as companion projects.

7. The American Bar Foundation contract would permit a complete duplication of legal research to be carried out in Latin America by the University of Wisconsin.

8. AID files contain no justification for the action of the negotiator of the foundation proposal doubling the amount of the contractor's estimated costs. This action appears to have been a device to circumvent a Federal regulation limiting the percentage of total estimated costs that could be obligated under a letter contract and had the effect of permitting REPAS to obligate the total funds requested by the contractor before the end of the fiscal year, without the necessity of a formal contract document.

RECOMMENDATIONS ²

It is recommended that the Agency for International Development take such action as may be necessary to—

1. Prevent waste and avoid duplication of effort by not entering into contracts for basic research until REPAS has determined that the research has not already been performed by the general research community.

2. Require REPAS to adhere to both the spirit and the letter of Federal procurement regulations and not indulge in practices designed to circumvent such regulations.

3. Discontinue the practice of disguising service contracts as research for the purpose of REPAS financing.

¹ For additional Findings and Conclusions, see H. Rept. No. 2436 (pt. 1 of this study), p. 2.

² For additional Recommendations, see H. Rept. No. 2436 (pt. 1 of this study), p. 2.

4. Write AID contracts in language which clearly sets out the obligations and responsibilities of both the contractor and the United States.

5. Abandon the practice of creating "great emergencies" at the close of the fiscal year in order to justify the hasty obligation of funds and prevent their return to the Treasury.

UNIVERSITY OF WISCONSIN CONTRACT

Development of Proposal

In February 1961, the International Cooperation Administration (ICA) (AID's predecessor) sponsored a conference of U.S. agricultural experts working in various countries in the Western Hemisphere to discuss the place of land policies and programs in the economic development of Latin American countries. It was held at Santiago, Chile, and its participants included Dr. Erven J. Long,³ the ICA official responsible for the conference agenda, and Dr. Raymond J. Penn of the University of Wisconsin. Although Long denies that he had any discussions with Penn about the possibility of the University of Wisconsin submitting a proposal to ICA for a research project on land tenure problems in Latin America, Penn wrote to Long on March 6, 1961:

* * * I want to take some more time, however, on the more important question of the kind of program the university should develop. This should be discussed with some people around here. We do have pretty solid backing from the Dean's office and the President's office for a Latin American land development and land reform program. * * *

Two weeks later, on March 20, 1961, the University of Wisconsin submitted to Long a document entitled "First Draft of a Proposed Letter from the University of Wisconsin to Henry Labouisse, Director of ICA." The transmittal letter, dittoed and sent to university members, and possibly others, in addition to Long, stated:

This draft has been drawn in part at the suggestion of personnel in U.S. agencies who are responsible for U.S. technical assistance programs in the area of economic development. We have reason to think the ideas we present will get serious attention.

In a handwritten note at the bottom of the copy he sent Long, Penn had written:

DEAR ERVEN: This is a start. It is out to the staff for suggestions & revisions. Assuming revisions of course I think we could get Dean Froker, Vice President Harrington or perhaps even the Pres. Which should it be? And who should the letter be written to?

RAY.

The draft letter spelled out the university's experience in the field of agrarian reform and its competence to carry out a research and training project in this and related fields. The document made note of the interest and experience of the university's law department, stating in part:

³ Long is a graduate of Wisconsin and has taught at that university.

Experience and competence in comparative law and particularly Spanish law will be an important part of any program in land ownership. The Wisconsin Law School which has been so active in land problems, could develop the legal support for this international commitment of the university.

On March 30, 1961, Long replied to Penn, making several suggestions, including the following:

I feel a purpose could be served by specifying a bit more detail regarding Wisconsin's long history of work in this field * * *. Also, I would indicate that historically, Geography, *Law*, Political Science, etc., departments have worked with the Agricultural Economics Department in conducting land tenure seminars. [*Italic supplied.*]

Under date of April 6, 1961, Penn sent Long a revised copy of the draft letter referred to above. Among the revisions were reaffirmation and expansion of the portion dealing with the capabilities of the university's law department in a land reform research contract. The document states in part:

Experience and competence in comparative law will be an important part of any program of land institutions and resource development. Land reform legislation and comparative land law, tax laws, the laws of credit, financing, and commercial documents, legislation for marketing reform and cooperatives are some of the specific matters that may well require legal support in addition to the basic understanding of comparative law. The Wisconsin Law School, which has been active in land problems for many years, could develop the legal support for this international commitment of the university.

AID files contain no response by Long to this communication from Penn. It should be noted that neither the March 20 nor the April 6 letter included any cost estimates. However, under date of April 30, 1961, Long received a "personal" letter from Kenneth H. Parsons, a professor at the University of Wisconsin, stating his ideas "regarding a possible ICA-U.W. contract for training and research in land tenure adjustments and economic developments." Attached thereto was a budget for the project, in the amount of \$340,000 for 3 years. Long testified he considered this a personal communication of the writer's ideas, with no status as a proposal. Nevertheless, it was the first communication he received giving any cost estimate of the university's proposed study.

The first formal proposal for a contract was submitted to AID by Dr. H. B. Hill, of the University of Wisconsin, with a letter of transmittal addressed to AID Administrator Fowler Hamilton dated September 25, 1961. Attached was a proposed annual budget of \$251,000 for 5 years' duration, with overhead "to be determined." Mr. Hamilton replied on October 10, 1961, stating the proposal was under study.

What happened to the proposal between that date and January 22, 1962, when it was turned over to Michael R. Belinky, the AID negotiator assigned to the proposed contract, is not recorded in AID files. Apparently it was turned over to REPAS sometime after that

office was established on December 29, 1961, with Dr. Edward C. Fei as Acting Director.

The above proposal, in setting forth the program objectives, states that the university desires to undertake this research to build a comprehensive body of knowledge about land ownership, land tenure and agrarian structure in the countries of Latin America. One of the university's specific objectives was stated as follows:

Analyze the legal basis for land ownership and tenure in each country and the legal effects of agrarian reform.

On February 5, 1962, in a memorandum to Fei, Long commented on the proposal in language which clearly indicated not only his general acceptance of the basic idea, but also that no comparable proposal should be sought from any other university. He stated:

This is an *unsolicited research proposal*, so limited to the University of Wisconsin as the sole source of this service. [Italic supplied.]

In view of Long's months of collaboration with Penn in developing the proposal, it is difficult to see how he can reconcile this statement with the facts.

In commenting on the budget which accompanied the proposal Long stated:

The costs seem generally appropriate, assuming that university overhead shall be absorbed within the \$1,250,000 for the 5-year period. * * * In all probability the \$5,000 per year suggested in the proposal for the library materials and publications will prove inadequate, and should be enlarged by transfer from other items.

In other words, it was Long's position that \$1,250,000 should be the maximum for a 5-year contract for the university and to the extent a line item should be increased it could be done by transfer from other items. This, however, appears to have been a very flexible position. Shortly thereafter, as will be discussed below, he injected himself into the contract negotiations (an area in which, by his own admission, he had neither responsibility nor competence), to defend the amount of overhead asked for in a budget which calls for a 77-percent annual increase in direct costs; i.e., from \$251,000 to \$444,125 per annum. The requested overhead charge which Long championed on behalf of the university would have brought the annual budget to \$532,950.

Negotiation of the Contract

When Belinky was assigned to negotiate the University of Wisconsin contract for REPAS, he was told that Fei had selected Long as the project manager. He was given a copy of the proposal but no other supporting papers. He therefore set about gathering all available documentary material bearing on the university proposal. However, it was not until 3 months after the contract had been signed that he discovered that he had not been given the correspondence between Long and the university. This material had apparently been kept by Long and never reached the files of REPAS. That such a condition could exist bespeaks of disorganized responsibility and sloppy internal housekeeping. As project manager, Long's failure to bring these documents to Belinky's attention raises a serious question of judgment or propriety, or both.

As indicated above, Long, in his memorandum to Fei of February 5, 1962, characterized the university's proposal as "unsolicited." The significance of this becomes apparent when we examine the effect which this had on the subsequent contract negotiations. According to Belinky, an unsolicited proposal in the field of research is one where the proposed contractor has developed a particular project and offered it to the sponsoring agency. He testified that the agency would be expected not to ask others to submit bids or proposals on the same subject because it would not want to divulge any of the information it had received from the unsolicited source, and it is therefore customary to deal with the proposer as the sole source. He said that in this case the University of Wisconsin was designated as the sole source on the ground that its proposal was "unsolicited." Therefore, he considered no other sources for the services because he had no discretion to request other proposals.⁴ Consequently, since this was to be a cost-reimbursable type of contract with no fee or profits, and there were no comparable proposals, the area of negotiation was extremely limited.

At a prenegotiation meeting of March 5, 1962, Dr. Robert L. Clodius, representing the University of Wisconsin, stated that he would submit a revised budget. That budget, submitted on March 16, 1962, showed an annual increase of 77 percent, that is, from \$251,000 to \$444,125, in direct costs. In addition, it requested overhead costs equal to 20 percent of all direct costs, or \$88,825.

Mr. Belinky found the overhead item objectionable, and on March 22 he telephoned Clodius and Penn and suggested that since Clodius had previously indicated that this was a "cost sharing" arrangement, the university should pay salaries and overhead for on-campus personnel and that AID pay all other costs. When this suggestion was rejected, Belinky proposed that the provisional overhead rates of 44 percent for campus salaries and 10 percent for off-campus salaries (which had been determined by the Navy for its contracts with the University of Wisconsin) be halved (22 percent and 5 percent) to carry out the cost-sharing idea. When this also was rejected, Belinky advised the university that he could authorize no more than the 44 percent and 10 percent rates established by the Navy.

A few minutes after his telephone conversation with Clodius, according to Belinky, he received a telephone call from Long, asking to see him regarding the revised budget. Belinky met with Long and Mr. Ray Davis, a consultant who was serving as Long's assistant. The only written record as to what took place at this meeting is contained in the following notation in Belinky's case diary which is part of the official AID records. Under the heading, "Documentation," is the following note:

3/22/62—Received a call from Dr. Long who asked me to come to see him. I went to his office and met him and a Mr. Ray Davis (who will assist Long). Long was to review the revised budget which Dr. Fei had sent to him and give me his written comments. Very little was offered to me by Dr. Long except a 2½ hour discussion on O/H⁵ and his adamant position that we should give Kr what he asks for. I told

⁴ For other comment on "unsolicited proposals," see p. 6, pt. 1 of this report.

⁵ The following abbreviations are used by Mr. Belinky in his diary: O/H—overhead. Kr—contractor. CAB—Contract Audit Branch (AID).

him I was not going to be a rubber stamp for his requests which I did not believe to be judicious or which in my opinion were contrary to good business or procurement practices.

I suggested we wait until I heard from Kr on 3/26/62 and then I would have a representative from CAB come over and we will discuss O/H and if he will furnish a written justification for giving Kr more O/H than it is entitled to, we will consider his request.

Neither Long nor Davis agreed with Belinky's notes that Long was adamant in his position that AID should give the contractor "what he asks for." However, both admitted they had made no notes of the meeting.

Belinky testified that no budget was attached to the contract, since to do so would be contrary to REPAS policy as set forth in a general statement of AID policy concerning development research contracting, dated April 10, 1962, prepared by Mrs. Frances Gulick, REPAS research specialist, and approved by Fei. That document contained the following provision:

The contracting officer will negotiate costs with the intention of arriving at the best reasonable estimate of the cost of the project, but *the budget finally accepted will not be made a part of the contract.* [Italics supplied.]

While Fei contended in his testimony that this paper, "drafted" by Mrs. Gulick, was for internal discussion only and was not an official policy document, he admitted that he approved its being sent out to the staff. Belinky had every right to rely on the document as an approved expression of AID policy as he was not advised differently at any time during the negotiation of the contract.

Objections of the Office of the General Counsel and the Audit Division

During the negotiations Belinky submitted a draft of the contract to the Office of the General Counsel of AID and to the Contract Audit Branch of AID's Audit Division for review.

Under date of April 27, 1962, the Office of the General Counsel expressed doubt as to—

* * * whether the agreement, as presently written creates legally enforceable rights and obligations on the parties. I said this because (a) the agreement is contingent upon the parties agreeing to the countries and localities for which the service is to be performed; (b) the terms used to describe the work to be done are vague and indefinite. For example:

- i. Length of time of any of the studies is not specified.
- ii. The nature of the training to be done is not described.
- iii. Personnel assigned are not specified.
- iv. Place of work, other than South America, is not specified.

Unfortunately, the Office of the General Counsel later approved the contract, although the defects noted under (a) above had been technically remedied only and those under (b) remained unchanged. A representative of the General Counsel's Office testified that the revised form of agreement which was executed is legal, in the sense it can create obligations on the part of the Government to reimburse the contractor for certain costs, even though under it AID could not insist

on any specific work being done by the contractor. He also expressed the opinion that under the contract as now written the Government no longer has any control over where the work is to be done, the selection of the localities being left wholly to the contractor.

Under date of April 9, 1962, the Contract Audit Branch commented on the proposed contract, stating in part that—

1. The scope of the work was too indefinite.
2. Unlike other contracts with the same university, this one did not include the standard budget.

The weaknesses and defects pointed out by the Contract Audit Branch went unheeded and witnesses from that office testified that the final contract (*which the Contract Audit Branch did not approve*) was even more indefinite than the draft which had inspired their above comments.

Uncoordinated Operations

Elsewhere reference has been made to the failure of AID to supply the negotiator with all of the documentary material relating to the proposal submitted by the university. However, the Agency had in its files information on related projects and proposals which could have been of material assistance in the negotiation of this particular contract. For example, the negotiator was advised by both Long and REPAS that the work to be done by the university should be described in the contract in broad and general terms rather than restrictive terms. Belinky testified that he did not agree with that position from the beginning, but he had no alternative but to support it, since the policy of REPAS was to write contracts with flexibility insofar as the research community was concerned. Perhaps he could have presented a stronger argument for his original position had he known that in April 1962 REPAS had entered into a contract with the Department of Agriculture for a study of land tenure and land reform in Puerto Rico. Under that contract the work to be done was described with a specificity which would seem to have been equally adaptable to the University of Wisconsin contract. This contract was for a much smaller amount (\$60,000), and although it was to develop guidelines for similar programs elsewhere in Latin America, apparently REPAS subsequently decided it either didn't need or couldn't wait for guidance.

AID also had at least two other contracts under negotiation involving research in land tenure or agrarian reform and related areas in Latin America. One was a contract with Iowa State University for work to be performed in Peru, and the other, which will be discussed later in this report, with the American Bar Foundation, an affiliate of the American Bar Association. The Iowa State contract described in considerable detail the work to be performed by that university, called for prompt reports and current work plans, and had a budget attached.

Strangely enough, the contract which was being negotiated with the American Bar Foundation had been strongly endorsed by Long, the project manager of the Wisconsin contract, as an interlocking companion project to the contract with the University of Wisconsin. Yet, Belinky was never advised by Long of its existence. How important knowledge of that proposal could have been to the negotiator is shown subsequently in this report.

The contract was executed on May 11, 1962, at the University of Wisconsin and was signed by Administrator Hamilton on behalf of AID. On the day the contract was to be signed, Fei received a telephone call from the university during which objection was made to a provision of the contract which required prior approval of salary increases in excess of 10 percent. The Chief of the Contract Services Division authorized the deletion of this limitation, and Mr. D. B. Easum, Executive Secretary of AID, deleted the provision and initialed the contract before it was finally executed.

Belinky's work diary, in commenting on this incident, states:

The contractor's official insisted that this proviso be deleted from the contract. They had us over a barrel since Mr. Fowler Hamilton was already there to make a speech and to sign on behalf of AID, and furthermore, press releases had already been issued by our Office of Public Affairs. Dr. Fei and I tried to dissuade the official from his request for the deletion of the proviso. The official said he will try to "sell it" to the V.P. of the University. Later, Dr. Fei told me the proviso had been deleted by Mr. Hamilton. Although Mr. Hamilton signed the contract, the deletion was initialed by Mr. D. B. Easum of AID.

Indefinite Contract

What the contractor-university is to do under its contract with AID is set forth in the following language in "Article I—Statement of Work," of the contract, under the heading "Services":

As soon as practicable after the date first hereinabove written and during the time specified in Article II hereof the Contractor shall supply the necessary personnel, equipment, materials and supplies, establish necessary facilities, and do all other things necessary to conduct research and training with respect to making a comparative study and analysis of the economic, social, political and administrative aspects of landownership, land tenure and agrarian structure in countries and localities of Latin American * * * Contractor shall train local research workers in research methods for analysis of land and agrarian reform problems. Contractor shall conduct the analysis and prepare reports in such fashion as to build a comprehensive body of knowledge on these subjects. Contractor shall exert its best efforts to assemble significant research publications on these subjects, to make results of such publications available in usable form to AID, and to utilize such findings in research undertaken under this contract.

There are no other details of the scope of the work spelled out in the contract—the where, how, when, etc., of the university's performance under the contract are not specified, or even suggested except as above quoted. There is no detailed work plan and under the contract the university is not required to submit one until the *end* of the first year. Failure of AID to insist on such a plan *before* the beginning of the operation suggests that none exists.

The subcommittee finds it difficult to resolve how the professional men who fostered this contract appeared to be so vague as to the

specifics of the work to be done and yet so clear in their knowledge of how much it is going to cost.

The vagueness of the contract may be due to an unwillingness on the part of REPAS officials to accept, or a failure to understand, the fact that the difference between "basic" and "applied" research permits contracts in the latter area to be drawn with precision and detail. The subcommittee is not alone in noting this deviation by REPAS, for Seymour J. Rubin, former AID General Counsel, made a similar observation after receiving the proposed University of Wisconsin contract. In a memorandum dated April 23, 1962, to Fei, he stated in part:

* * * *in the University of Wisconsin contract, basic research is not being done, nor is the contract designed merely to stimulate thinking by a person experienced in his field, in the hope that a useful product will come out of such thinking. Rather, in the University of Wisconsin contract, a specific work product is being contracted for.* It is therefore both possible and appropriate, in such situations, to define the scope of work more closely than would be the case for general research grants; and in so doing greatly expedite our mutual labors. [Italic supplied.]

The failure of REPAS to understand its basic purpose is perhaps the greatest single factor contributing to its ineffectual operations.

AMERICAN BAR FOUNDATION CONTRACT

Origin of the Project

Under date of January 1, 1961, the American Bar Foundation reduced to writing its plan to conduct a 2-week institute to discuss problems of agrarian reform. Research was contemplated both before and after the institute and outstanding lawyers from the United States, Latin America, and Canada would be invited to participate and attend the institute. The document contained no suggestion that U.S. aid would be sought to fund the proposed budget of \$175,000 for the 1 year's work involved.

The Department of State was advised by the American Bar Foundation of its plans, and on May 31, 1961, a meeting was held at the Department to discuss the matter. The meeting was called by the then Deputy Assistant Secretary of State for Inter-American Affairs, Milton Barral. Dean E. Blythe Stason represented the American Bar Foundation and Long appeared for AID. According to Long, Secretary Barral made some general statements to the effect that the American Bar Foundation plan was the sort of thing in which the Department of State was interested.

Thereafter, on July 14, 1961, Long, at the request of the State Department, went as an observer to a meeting in Iowa City, Iowa, arranged by the foundation, and attended also by representatives of universities and of the Department of Agriculture. A subject discussed was the necessity for research to be undertaken, both in prep-

aration for the institute and subsequent thereto, in order to make the institute more meaningful.

On October 27, 1961, Long received a letter from Dean Stason enclosing a foundation plan. Attached to it was a budget increase to \$200,000 by adding \$25,000 for graduate student expenses. The proposal was still in the form of an institute, a cooperative enterprise with appropriate institutions in Latin America, and designed to result in mutual enrichment and the strengthening of agrarian reform in Latin America. The transmittal letter did not suggest that AID finance the proposal, and according to Long, there had been no discussion at the conference at Iowa City as to how the proposal would be financed. On November 20, 1961, however, Stason wrote Long, stating:

* * * When your reorganization is completed we hope to have an opportunity to work further with you and your associates in developing our project. If we can reach a satisfactory end result in the form of a contract with AID, this will be most gratifying.

This was the first specific suggestion for AID financing.

The Bar Foundation's Proposals

In February 1962, the foundation first submitted a formal proposal to AID. By transmittal letter of February 6, 1962, Stason stated:

Naturally, financial support of the project is a principal concern.

The letter stated further that the foundation had had discussions with the Rockefeller and Johnson Foundations, and although definite commitments had not yet been requested the foundation had reasonable assurances of \$50,000 from those sources. Further, the foundation itself was to contribute from \$25,000 to \$30,000.⁶ The letter also noted that although \$200,000 had earlier been budgeted, a more careful study of the matter developed that research and publication aspects would add an additional \$50,000 for a total of \$250,000.

After reviewing the proposal, Long, by memorandum of February 27, 1962, recommended to Fei that a contract be concluded with the American Bar Foundation. Before this could be done the Bar Foundation submitted another proposal on April 30, 1962, with a budget of \$347,600, and again Long suggested to Fei that it be accepted. The major difference between the proposals is that the earlier one had a 1-year budget, whereas the more recent covers 2 years. Dr. Long stated he had nothing to do with the last proposal, except to write a memorandum recommending its approval. On June 18, the foundation submitted still another revision, raising the estimate to \$400,000.

On June 22, 1962, a letter contract⁷ was signed with the American Bar Foundation in the total estimated amount of \$700,000, of which only \$340,000 could be obligated.

⁶ Dr. Long testified he did not know whether the funds referred to by Stason as obtainable from sources other than AID will get into the final contract, which is presently being negotiated.

⁷ A letter contract is described in the Federal Procurement Regulations as "A written preliminary contractual instrument which authorizes immediate commencement of manufacture of property, or performance of services, including, but not limited to, preproduction planning, and the procurement of necessary materials."

The Bar Foundation Contract

Dr. Fei signed the letter contract on June 22, 1962, with the American Bar Foundation, in anticipation of the negotiation of a definitive cost reimbursement contract, to—

Conduct research and make analytical studies of the legal and related aspects of agrarian planning which include but are not limited to legal concepts of land ownership, land tenure, land disposition, rights of land occupancy, land utilization, methods of bringing idle land into productivity, agricultural credit institutions, agricultural marketing, tax systems, rural education; the administration of law relating to the above subjects, whether written or customary, and the institutions administering these laws.

In addition to research, the foundation is to prepare and publish research studies, reports, etc., conduct conferences and seminars and submit to AID such documents and reports as may reasonably be required.

The letter contract states that the estimated cost of the work will be \$700,000, "which shall not be exceeded without prior written approval of AID." Under the letter contract \$340,000 was committed.

A Federal Procurement Regulation limits obligations under letter contracts to 50 percent of the total estimated cost of the contract. To commit funds in the total amount obligated in the letter contract, the negotiators had to establish that such an amount (\$340,000) was only 50 percent of, or less than, the total estimate. To effect this, the negotiators would have to double the total estimate, and for this a justification was needed.

The final contract was raised to an estimated \$700,000 by making the work of the American Bar Foundation worldwide, and it may have been no more than coincidence that this new amount was just enough to permit the letter contract to obligate the full amount of the contract for work in Latin America.

Since less than a month prior to signing the contract the Bar Foundation had indicated that it was not in a position to conduct worldwide research at that time, one might reasonably question whether enlarging the scope of the contract was not merely a device to avoid the Federal Procurement Regulations restrictions.

Jack Oppenheimer, Senior Research Officer, REPAS, and monitor of the American Bar Foundation project, negotiated the letter contract between June 19 and June 22, 1962, during which period he met with AID officials, including Fei and Davis, and with representatives of the foundation. Oppenheimer thereafter drew the letter contract with the foundation, and presented it to Fei for his signature.

In a memorandum accompanying the letter contract, he advised Fei that in the discussions preceding the letter contract—

* * * it was the consensus that a functional, as distinguished from a geographical, approach to research on the legal aspects of agrarian planning was desirable.

For that reason, Oppenheimer testified, when the letter contract was drawn up, the research contemplated under it was global, rather than

being restricted to Latin America. As a basis for the "consensus" decision to make the contract global the memorandum also stated:

It was agreed that the Wisconsin contract (to which this proposed contract is a companion project) for research and analysis of the economic, social, political, and administrative aspects of land reform as related to Latin America is too restrictive in geographic coverage and, hence, too limited for adequate substantive and comparative comprehension of the problems.

According to Oppenheimer, Long, technical adviser on the foundation contract, not only agreed to the worldwide basis, he was also one of the group who suggested it.

He attributed the origin of the global aspect of the undertaking to a letter of May 18, from Stason to Fei, which was a formal request for a contract with the foundation for \$347,600. Oppenheimer interpreted the statement in the letter as to the desirability of expanding research coverage to obtain comparative analyses of laws, customs, and practices to mean global.

Stason's letter further stated:

As progress is made in the study of agrarian legal problems in the Western Hemisphere it is hoped that the scope of the studies may ultimately be expanded to include other areas of the world such as Africa and Asia.

Prior to the execution of the letter contract no interest in expanding the research to cover the whole world was evident. As late as May 28, 1962, Stason wrote to Long:

We do not wish to undertake more than we can handle with high credit, but see no reason why we could not extend our present program to include a small pilot venture into Africa.

The record thus shows that as late as May 28, Stason wanted to limit the foundation's proposed research activities pretty much to Latin America. However, less than a month later the contract emerged as a global project to be funded by \$700,000.

The foundation, according to Oppenheimer, had submitted to AID, on June 18, a tentative budget of \$400,000. In Oppenheimer's memorandum of June 22, to Fei, he stated:

Since the American Bar Foundation's revised budget of April 30, 1962, and its preliminary draft budget of June 18, 1962, applicable to the Latin American first phase of the project, totaled \$347,600 and \$400,000, respectively, and the applicable Federal Procurement Regulations limited obligations under letter contracts to 50 percent of the total estimated cost, it was determined that \$700,000 would be a reasonable estimate of the total cost of the work to be performed under the contract and that \$340,000 could be committed prudently under the letter contract to the first and subsequent phases of the work to be performed.

Experienced in letter contracting, Oppenheimer knew that Federal Procurement Regulation 1-3.405-3 imposed a restriction on the

amount of funds which could be obligated by a letter contract. That provision reads:

The maximum liability of the Government stated in the letter contract generally shall not exceed 50 percent of the total estimated cost of the procurement, but this liability may be increased in accordance with agency procedures.

The letter contract provides that the estimated cost of the work will be \$700,000, and by that letter contract \$340,000 was committed, almost the exact amount the foundation has requested in its formal request for contract of May 18, 1962.

In contrast, the amount the foundation had first formally requested from AID was \$200,000.

CONGRESSIONAL INTENT IGNORED

The House Committee on Foreign Affairs, in commenting on how it expected the REPAS office to operate under the research authorization of section 241 of the Foreign Assistance Act of 1961, stated:

The committee believes that perhaps the first major effort of the new Office of Development Research and Assistance should be to collect, organize, and evaluate the data already available (H. Rept. 851, 87th Cong., 1st sess.).

It is clear that in enacting section 241, the Congress intended that the office established to carry out its provision would first ascertain what had already been done in the fields to be explored before expending any additional funds in those fields.

The interests of economy and fulfillment of AID's needs probably best could have been served if AID had first let a contract limited to seeing what data already existed, instead of coupling such review with new research.

As it was, REPAS started out as if land tenure research were totally new and therefore made the Wisconsin contract all-embraceable. As the contract is drawn, there is no way of knowing how much effort (and how much cost) is to go into research that has already been done.

Dr. Fei testified that he has no individual office or division within REPAS responsible for collecting, organizing, and evaluating data which may already be available on matters involved in the proposed research contract, but that he assumed that people employed by AID to assist in land reform problems had performed that function. Thus, he assumed that Long knows the data available in that field, since he deals with it every day. Dr. Long, however, testified that because of the press of other matters he did not make an exhaustive study of what all other agencies of the Government and private agencies had done in the field.

The subcommittee had requested the Library of Congress to furnish, within 48 hours, a bibliography of land tenure research in Latin America over the past 10 years. In that short period, the subcommittee was furnished a four-page memorandum listing a substantial number of studies. The American Bar Foundation itself had prepared a bibliography on the subject containing 31 pages of references.

Neither Dr. V. Webster Johnson, Land Reform Specialist, Bureau of Latin America, AID, nor his superior, Lyall Peterson, had reviewed the material in AID files resulting from some 20-odd years of technical assistance in the field of agriculture in Latin America, although Long claimed to have read that material scrupulously.

Long also testified that he did not make a thorough investigation of the availability of professional people in Latin America in the fields of agriculture or law who have competency and could be of assistance in the area. Similarly, no one in AID had responsibility for coordinating the contract which the Iowa State University has with AID, a portion of which deals with land tenure research in Peru. Nevertheless, Fei testified that he was sure there was no duplication in that contract and the University of Wisconsin contract, such testimony being another manifestation of his faith: "We are dealing with competent researchers."

POSSIBLE DUPLICATION OF RESEARCH

From a reading of the proposals submitted by the University of Wisconsin, it is clear that they recognized, as a basic requirement for the success of the research project, the necessity to analyze the legal basis for land ownership and tenure, as well as all other matters of law bearing on or related to agrarian reform. The university stated both its willingness and competence to do this aspect of the project, and the subcommittee has no reason to doubt or question this. In addition, AID itself has attested to the university's unchallenged leadership in the field of agrarian reform by using this qualification as the overriding justification for granting this contract to the university. And, as pointed out elsewhere in the report, Long himself urged the university, in its proposal to AID, to describe, among other things, the part which the university's law department could play in carrying out the project.

In view of the above, AID's protestation that it must buy \$700,000 worth of American Bar Foundation services in a companion project to round out the contemplated work of the university is less than convincing. The real justification, if any exists, may be something entirely different, and the subcommittee cannot but sympathize with the position taken by an Assistant General Counsel of AID who, after reviewing the American Bar Foundation proposal, commented in part, under date of May 25, 1962:

The chief merit of the proposal may be the ABA [American Bar Association] involvement in the Alliance, but beyond that its necessity as a Government-financed effort is not immediately apparent to me.

Apparently, no one questions the fact that under the University of Wisconsin and American Bar Foundation contracts there will be duplication of effort. Unfortunately, however, these documents are drawn in such general terms that no AID witness could tell the subcommittee how much duplication would occur. In view of the generally recognized expertise of the University of Wisconsin in the area of land reform research, it is entirely possible that its legal research in the contract may be entirely duplicated by the American Bar Foundation. The subcommittee also notes that although the University of

